



DEPARTMENT OF TRANSPORTATION

**Federal Transit Administration**

**[Docket No. FTA- 2014-0018]**

**Bus and Bus Facilities Formula Program: Guidance and Application Instructions**

**AGENCY:** Federal Transit Administration (FTA), DOT.

**ACTION:** Notice of availability of final circular.

**SUMMARY:** The Federal Transit Administration (FTA) has placed in the docket and on its website, guidance in the form of a circular, to assist recipients in their implementation of the Section 5339 Bus and Bus Facilities Formula Program (Bus Program). The purpose of this circular is to provide recipients of FTA financial assistance with instructions and guidance on program administration and the grant application process. This circular is a result of the new Bus Program enacted through the Moving Ahead for Progress in the 21<sup>st</sup> Century Act (MAP-21).

**DATES:** The final circular becomes effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** For program matters, Sam Snead, Office of Transit Programs, (202) 366- 1089 or [samuel.snead@dot.gov](mailto:samuel.snead@dot.gov). For legal matters, Michelle Hershman, Office of Chief Counsel, (202-493-0197) or [michelle.hershman@dot.gov](mailto:michelle.hershman@dot.gov). Office hours are from 8:30 a.m. to 5:00 p.m., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

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## **II. Overview**

The Moving Ahead for Progress in the 21<sup>st</sup> Century Act (MAP-21, Pub. L. 112-141), signed into law on July 6, 2012, establishes the Section 5339 Bus and Bus Facilities Formula program (Section 5339 or Bus Program), replacing some of the elements of the Bus and Bus Facilities discretionary program (formerly 49 U.S.C. 5309(b)(3) under the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users Act of 2005 (SAFETEA–LU)). The Section 5309 Bus and Bus Facilities Program under SAFETEA-LU provided discretionary funds for capital bus and bus facility grants, which from 2010-2012, were primarily used in support of the U.S. Department of Transportation’s (U.S. DOT) State of Good Repair, Bus Livability, Veterans Transportation and Community Living, and Clean Fuels initiatives. In addition,

SAFETEA-LU allocated funds under this program for Ferry Boat Systems, Fuel Cell Bus, and the Bus Testing program. The new Section 5339 Bus Program provides funding to replace, rehabilitate, and purchase buses and related equipment as well as to construct bus-related facilities.

The FTA is implementing new circular 5100.1, “Bus and Bus Facilities Program: Guidance and Application Instructions,” in order to provide grantees with guidance for applying for funding under the Bus Program. In addition, the circular addresses the requirements that must be met in the application for Section 5339 program assistance.

On July 30, 2014, FTA issued a notice of availability of the proposed circular in the *Federal Register* (79 FR 44241) and requested public comment on the proposed circular. The comment period closed on September 29, 2014. The FTA received comments from 76 entities, including trade associations, State DOTs, metropolitan planning organizations, public transportation providers, and individuals. This notice addresses comments received and explains changes FTA made to the proposed circular in response to comments.

This document does not include the revised circular; however, an electronic version is available on FTA’s Web site, at [www.fta.dot.gov](http://www.fta.dot.gov). Paper copies may be obtained by contacting FTA’s Administrative Services Help Desk, at (202) 366–4865.

### **III. Chapter-by-Chapter Analysis**

#### **A. General Comments**

This section addresses comments that were not directed at specific chapters, but to the circular as a whole.

Two commenters recommended that FTA provide flexibility to recipients of FTA funds whenever the statute can accommodate such flexibility. With regards to this circular, one of the commenters asserted that flexibility was necessary so that small transit systems are not burdened with requirements applicable to large systems. In response, most of the FTA programs authorized by Congress do not provide for varying program requirements based on the size of the public transportation provider. Certainly where such flexibility exists, FTA grants that flexibility. The same commenter noted the length of the proposed circular in relation to the length of the statutory provision and suggested that FTA streamline the guidance document to focus on issues specific to Section 5339 and make greater use of cross references to other FTA guidance documents. In response, FTA notes the purpose of the document is to provide detailed guidance in order to address all of the legal provisions required in delivering an FTA program. The content contained within the circular ensures grantees fully understand the requirements of Section 5339.

Another commenter urged FTA to use consistent language and definitions throughout its regulatory documents. The FTA has updated this circular to be as consistent and uniform as possible with other circulars.

A few commenters recommended FTA add language to the “Purpose” section to clarify its understanding of the intended purpose of the Section 5339 program. In response, FTA notes that the purpose of the circular and the Bus and Bus Facilities formula program is clearly stated on the cover page of the circular.

## **B. Chapter I – Introduction and Background**

Chapter I of the circular is an introductory chapter that covers general information about FTA and its authorizing legislation, provides a brief history of the Bus Program, includes definitions applicable to the Bus Program and defines terms applicable across all FTA programs. Where appropriate, we have used the same definitions found in rulemakings or other circulars to ensure consistency.

The FTA received six comments on this chapter, five of which related to definitions and one which related to fleet management plans. One commenter indicated that the term "original useful life" is not defined in the circular or any other FTA documents and could be interpreted as a minimum useful life, an economic useful life or a service life. The commenter stated that the distinction between a minimum useful life and a service life is critical in determining if an activity can be eligible as an overhaul. The FTA has amended the circular to reflect the terminology, "minimum useful life," and notes the definition of overhaul is identical to the definition of overhaul in Circular 9030.1E, Urbanized Area Formula Program: Program Guidance and Application Instructions. One commenter recommended incorporating the definition of "rehabilitation" from the proposed Section 5337 State of Good Repair Grants Program Circular (5300.1) into the final version of this circular. In response, FTA has defined "rehabilitate" in section 4 of Chapter 1 to mean rebuild of a revenue vehicle to the original specifications of the manufacturer. Further, given FTA's response to comments regarding the eligibility of mid-life overhaul activities, which is explained in more detail in the Chapter 3 analysis in this notice, FTA has expanded the definition of rehabilitate to include mid-life overhaul activities. This definition specifically relates to the Bus and Bus Facilities Program as the

definition in FTA Circular 5300.1 "State of Good Repair Grants Program: Guidance and Application Instructions," pertains mostly to fixed guideway transit projects.

Two commenters suggested revising the definition of "Clean Fuel Bus" to incorporate hydraulic hybrid technology and other eligible vehicle technologies. In response, FTA notes that the definition included in the proposed circular mirrors the statutory language used by Congress in creating the program (see, 49 U.S.C. 5308 [Repealed]) and includes "other low or zero emissions technology" which is expansive enough to cover hydraulic hybrid and other technologies. The FTA also notes that as most transit vehicles are already eligible for a Federal match greater than 80 percent because of their Americans with Disabilities Act (ADA) and Clean Air Act (CAA) compliance, the specific inclusion of the other technologies is not going to qualify recipients for a greater FTA match beyond the existing ceiling.

One commenter questioned the efficiency of requiring both the Fleet Management Plan and Reporting and the Transit Asset Management (TAM) Plans and Reporting. The commenter suggested FTA consider consolidating the Fleet Management Plan and Reporting under the Transit Asset Management Plans and Reporting to avoid redundancy. In response, FTA recognizes that some of the information gathered for the Fleet Management Plan may be useful when reporting to the National Transit Database for Transit Asset Management and recognizes that the requirements for the TAM plans and reporting are being promulgated through a rule-making. Therefore, FTA is unable to consolidate them at this time, nor does it see these requirements as redundant, but rather as complementary. We will continue to review these processes for the possibility of streamlining.

## **C. Chapter II – Program Overview**

Chapter II covers general information about the Bus Program, including program administration, eligibility and oversight. Chapter II clarifies that FTA will only apportion Bus Program funds for urbanized areas (UZA) to the State and to designated recipients that operate or allocate funding to fixed-route bus operators. There are no other eligible direct recipients for the Bus Program under MAP-21. This section also describes the process for allocating funds to subrecipients and discusses pass-through arrangements whereby a State or designated recipient may pass its Bus Program grant funds through to a subrecipient to carry out the project agreed to in the grant. Unlike supplemental agreements between a designated recipient, direct recipient, and FTA, a pass-through arrangement to a subrecipient does not relieve the designated recipient of its responsibilities to carry out the terms and conditions of the grant agreement.

The FTA received 18 comments on this chapter, 10 of which related to recipient eligibility and the designated recipient's role in program administration for this program.

Several of the commenters expressed concerns that only States and designated recipients can apply for funds under the Section 5339 program and suggested FTA broaden eligibility to include fixed route bus operators that are not designated recipients. A few commenters suggested that the existing procedure for Section 5307 which involves designated recipients for a metropolitan area and public transit agencies executing supplemental agreements to permit public transit agencies to apply directly to FTA and assume all responsibilities under a grant agreement with FTA be followed under Section 5339 to relieve the administration burden on designated recipients. Another commenter suggested that FTA exercise its administrative authority to interpret eligible recipients

similar to the former Section 5308 Clean Fuels program. In response, FTA notes that the statutory language in Section 5339(c) clearly states that “eligible recipients in this section are designated recipients that operate fixed route bus service or that allocate funding to fixed route bus operators” and thus, FTA has no flexibility in its interpretation of eligible recipients for Section 5339.

A few of the commenters indicated that FTA should revise Chapter II to clarify that Section 5339 funds may be used for bus facilities and vehicles that do not run in fixed-route service. In response, FTA has revised Chapter II to clarify that recipient eligibility does not limit Section 5339 funds to fixed route projects. Thus, capital projects in support of demand response services are eligible under the Bus Program.

Two commenters asked FTA to revise Chapter II to allow a Governor to transfer the funds allocated to the State for use in the UZAs of less than 200,000 in population to the Section 5307 program. The transfer provision found at Section 5339 (e)(1) allows the Governor to transfer the “National Distribution” funds to supplement the State’s Section 5311 rural apportionment or to any urbanized area’s Section 5307 apportionment, but does not permit the transfer requested by commenters. The law is explicit regarding the transfer requirements of this program, and FTA has no discretion in adding additional transfer provisions.

One commenter asked FTA to clarify that cooperative planning agreements between the Section 5339 designated recipient and subrecipients developed in compliance with Federal planning regulations (23 CFR 450, Subpart C) and that specify the role of each agency in allocating Section 5339 funds will satisfy FTA’s requirement for a written



agreement. The FTA agrees that the suggested cooperative planning agreement is an example of a written agreement.

One commenter asked for clarification regarding whether the State may delegate Section 5339 project selection for small urbanized area funds to regional or local agencies as long as the State retains final approval of the program of projects. In response, FTA notes that States are responsible for administration of this program for small urban and rural areas. If they choose to delegate the responsibility to make recommendations for funding, that is allowable. However, the State must ensure that the funds are used in small UZAs and the State must monitor the use of the funds.

In response to the section on FTA oversight, one commenter asserted that triennial reviews should not apply to Section 5339 designated recipients that allocate funds to fixed route bus operators but do not operate bus service themselves. The FTA notes that recipients may be subject to a Triennial, State Management, or other regularly scheduled comprehensive review to evaluate their performance. Oversight reviews of recipient performance allow FTA to determine if the recipient is complying with the certifications it has made. To further this effort, FTA's oversight reviews programs have been augmented to incorporate questions pertaining to how designated recipients administer this program. In addition, FTA is working within its existing oversight programs to recognize where direct recipients of Section 5307 funding, who may be receiving direct oversight from FTA, may be subrecipients under the Section 5339 program. As a result, FTA will look to designated recipients for the overall administration of the program pursuant to its management plan, but will not require duplicative oversight. As

appropriate, it is recommended that designated recipients review the results of subrecipients' past oversight reviews.

The FTA received six comments on section 7 of this chapter related to the Bus Program's relationship to other programs. A few commenters expressed concern that language in this section of the proposed circular regarding Section 5339 eligibility guidelines could thwart the ability of a State to effectively transfer the funds for use in the Section 5311(c) rural program. In response, FTA notes that funds available under the National Distribution allocation may be transferred from Section 5339 to Section 5311 for administrative purposes, but if the funds are transferred, they must be used for eligible bus and bus facilities capital projects.

One commenter supported FTA's clarification in this section regarding identifying ways in which the Section 5339 funds relate to other FTA programs, specifically as outlined under 49 U.S.C. 5309. Specifically, the commenter stated that this clarification offers public transit agencies some flexibility in developing financing packages for large capital projects.

Though most comments related to bus overhauls were submitted in relation to Chapter III of the proposed circular, one commenter noted in response to this section that bus overhauls are listed as eligible capital expenses in FTA Circular 9030.1E (page IV-2), which determines projects eligible for funding through Section 5307, and FTA Circular 9040.1G (page III-8), which lists eligible capital expenses under Section 5311. The commenter asked FTA to clarify whether its intent is to encourage applicants to use Sections 5307 and 5311 to obtain funding for engine overhauls instead of Section 5339. In response, recipients are eligible to utilize these other programs to support engine

overhauls. However, as noted in the next section in response to comments, FTA has also expanded eligibility under the Section 5339 program to include engine overhaul activities, which is described in Chapter III.

#### **D. Chapter III – General Program Information.**

In this Chapter information is provided regarding the availability of funding and addresses general project and program eligibility. The FTA received a number of comments on this chapter, many of which related to FTA's proposed exclusion of midlife overhauls from the list of eligible capital projects in section 5 of this chapter.

Several commenters expressed concern that not enough Section 5339 funds would be available to rural transit agencies based on the apportionment calculations for the Bus Program detailed in Chapter III of the proposed circular. Specifically, commenters asserted that the Section 5339 funds should be allocated based on need rather than population. One commenter asked that FTA revise section 1 to state that the National Distribution set aside funds should be the only Section 5339 funds available to rural transit operators. Any change to the National Distribution set aside would require legislative action. The FTA notes that Section 5336 lists how the apportionment of all FTA formula programs must be allocated. Therefore, FTA does not have the discretion to change the formula allocations for Section 5339. The same commenter asked FTA to revise section 3 to make Section 5339 funding available for the same amount of time as Sections 5307 and 5311 funds. In response, to ensure timely obligation of funds and for consistency with the Section 5309 and 5337 programs as well as the former Bus and Bus

Facilities program, FTA has established the period of availability to be 4 years – the year of apportionment plus 3 additional years.

A few commenters recommended revising section 4 to expand the Governor's ability to transfer funds to Section 5311 projects. One commenter suggested the transfer should be mandated based on vehicle replacement needs rather than Governor's discretion. FTA notes that the law does not stipulate that Governors must prioritize vehicle replacements before expansions and facilities. Therefore, FTA has no authority to mandate funding priority as it relates to types of projects or intended recipients (e.g. rural).

Two commenters asked FTA to allow designated recipients other than States to transfer apportionments to Section 5307 to be used for eligible Bus Program activities and to allow Section 5307 direct recipients to apply directly to FTA for their allocation in order to eliminate unreimbursed costs of full grant administration. As noted previously, the only transfer provision allowed under this section is for the National Distribution allocation, which is provided to the States. Therefore, FTA notes that only States can transfer 5339 funds, and even then it is limited to the amounts available under the National Distribution allocation. Therefore, FTA does not have the discretion to allow other recipients to transfer funds. Furthermore, a set aside was not provided for administrative funds for this program.

In regards to midlife overhauls, the circular proposed that rebuilds are eligible but overhauls and preventive maintenance are not. The majority of the commenters recommended that overhauls be expressly included in the list of eligible capital projects.

A few commenters recommended that FTA allow bus overhauls to be considered as an eligible capital expense under Section 5339 by specifically listing it as one of the

capital projects eligible in section 5 with the caveat that it is the sole preventive maintenance activity allowed under Section 5339. One commenter asserted that FTA has no statutory authority to make preventive maintenance ineligible under Section 5339. A few commenters stated that the definitions for overhaul and rebuild in the proposed circular mischaracterize overhauls as a preventive maintenance activity and asserted that midlife overhauls extend far beyond those areas covered by manufacturers' recommended maintenance procedures. Several commenters asserted that MAP-21 defines Section 5339 project eligibility to include both bus rehabilitation and bus replacement/purchases, without distinguishing between mid-life overhauls and rebuilds in further defining rehabilitation.

A few commenters expressed concern that FTA's position on mid-life overhaul eligibility could reverse the positive trend of clean fuel technologies. Without Federal dollars available for mid-life energy storage replacement and upgrades, financially-strapped transit agencies may not choose to buy hybrid and electric drive buses.

In response to the myriad of comments related to bus overhauls, FTA has revised the circular to include bus overhauls as an eligible capital project, specifically as an eligible rehabilitation activity. For rolling stock to be overhauled, it must have accumulated at least 40 percent of its useful life. It is important to note that overhauls are the only preventive maintenance capital expenses allowed in the Section 5339 program. The FTA has also notes that the overhaul eligibility is in addition to eligibility of rehabilitation which is defined as "rehabilitate" in section 4 of Chapter I.

One commenter encouraged FTA to continue to allow the use of Federal funds for public artwork that enhances a transit facility or has historical meaning to the local

region. In response, MAP-21 specifically repealed the eligibility of public artwork in public transportation projects. However, art can be integrated into facility design, landscaping, and historic preservation, and funded as a capital expense. Art also can be integrated through the use of floor or wall tiles that contain artist-designed and fabricated elements, use of color, use of materials, lighting, and in the overall design of a facility. In addition, eligible capital projects include incidental expenses related to acquisition or construction, including design costs. Therefore, the incidental costs of incorporating art into facilities and including an artist on a design team continue to be eligible expenses. Procuring sculptures or other items not integral to the facility is no longer an eligible expense.

The FTA received several comments on the proposed elimination of "intercity bus stations and terminals" from the list of eligible projects contained in the proposed circular. Two commenters indicated that "intercity bus stations and terminals" is the only category of eligible projects which appears in Circular 9300.1B, but does not appear in draft Circular 5100.1. A few commenters suggested that FTA revise section 5 to specify that intercity bus stations and terminals are eligible for funding as joint development improvements. Other commenters suggested FTA revise section 6 to ensure that joint development improvements may include intercity bus stations and terminals, including the outfitting of those stations and terminals. In response, FTA notes that intercity facilities are an eligible activity under the Section 5339 program as part of a joint development project. The FTA has revised section 6 to ensure joint development improvements expressly include intercity facilities. For more information on the eligibility of intercity facility joint development projects see FTA Circular 7050.1

“Federal Transit Administration Guidance on Joint Development,” pages I-3 section f., III-5 section 2, and III-7 section 4.

A few of the commenters indicated that the new "fair share of revenue" threshold detailed in FTA Circular 7050.1 makes use of Section 5339 funds difficult, if not impossible, because there would be no way for intercity bus operators to make the required payments. Specifically, the commenters asked FTA to ensure that the “fair share of revenue” threshold (page VI-4, section 5 of FTA Circular 7050.1) does not apply to intercity bus stations or terminals; and request FTA to use the “publicly operated projects exception” for such facilities so that the amount of revenue generated is less than the amount of the FTA investment. Chapter III of FTA Circular 7050.1 states that community service or publicly operated facilities can have a fair share of revenue less than the required federal threshold, but it must be based on actual revenue. In response, FTA concurs that in accordance with FTA Circular 7050.1, any intercity bus project that is within, or physically part of, a “publicly operated” facility (as in most cases), can have a fair share of revenue less than the federal threshold requirements (see FTA Circular 7050.1 “Federal Transit Administration Guidance on Joint Development,” page III-6 for additional information on FTA’s fair share of revenue requirements).

One commenter stated that the proposed guidance appears to exclude as an eligible expense the procurement of replacement or expansion vans used in revenue service and related maintenance and administrative facilities, including specialized vans and related facilities used to provide ADA complementary paratransit service. The proposed circular specified the eligibility of Section 5339 Program funds for the acquisition of "buses" for fleet and service expansion and for bus maintenance and administrative facilities,

consistent with the statutory language. The list of eligible projects in both the proposed and final circular are intended to be illustrative. Although the proposed guidance also included a more general statement that allowed the use of Section 5339 Program funds for the "acquisition of replacement vehicles," the eligibility to fund the procurement of vans to replace those that have reached or exceeded their useful life was not clearly defined. Another commenter recommended that the procurement of expansion or replacement vans and related maintenance and administrative facilities used by vans in revenue service (including those used in ADA required complementary service) be considered eligible expenses. In response, FTA notes that the procurement of expansion or replacement vans and related maintenance and administrative facilities used by vans in revenue service is an eligible activity under Section 5339. Therefore the eligible capital project language of the circular has been adjusted to include these activities.

Two commenters asked FTA to revise the definition of eligible capital projects in section 5 to expressly state that use of Section 5339 funds is not limited to projects undertaken on fixed routes. The FTA notes that the list of eligible capital projects did not expressly limit Section 5339 funds to fixed route bus purchases. However, FTA is amending the circular to clarify that eligible projects as authorized in Section 5339(a)(1) and (2) are not limited to fixed route only. The reference to fixed route only applies to determining recipient eligibility of Section 5339 program funds.

One commenter sought clarification regarding whether general administrative expenses that a designated recipient incurs are eligible as an indirect cost. The FTA notes that only project administrative costs are allowable, not program administrative costs. The same commenter suggested that FTA include the federal share for project



administration costs. The Federal share of project administrative costs is 80 percent since it is considered a capital expense.

One commenter sought clarification regarding whether eligible capital projects includes only expansion of existing services or whether Section 5339 funds can be used to fund new vehicles for new transportation services. The FTA notes that Section 5339 funds can be used for both the expansion of existing services and to fund vehicles for implementation of new transportation services.

One commenter indicated that section 5 is missing information on the percent of eligible costs based on the different possible types of bus operating contracts. Specifically, the commenter asserted that the circular should contain a schedule similar to Exhibit IV-1 in Circular 9030.1E, showing for various contract types the percentage presumed to be eligible without requiring further documentation. In response, FTA notes that only some categories of capital cost of contracting are eligible for Section 5339 funding; specifically contract types that include preventative maintenance are not eligible. Therefore, FTA has updated information on capital cost of contracting in section 5 and included Exhibit III-1: “Percent of Contract Allowed for Capital Assistance Without Further Justification.”

Section 10 proposed additional sources of local share that recipients may use as part of local match for a capital project. Two commenters expressed appreciation for FTA’s provision of clear instructions regarding how the use of Transportation Development Credits (toll credits) should be indicated in a grant application.

Regarding local match, one commenter suggested that FTA allow the guaranteed annual savings of an energy savings performance contract (ESPC) to be used to offset the

local match. Grantees interested in ESPC as match should contact their FTA regional office for additional information.

One commenter suggested that the circular should state that for ADA or CAA activities the federal share may not exceed those applicable shares. Specifically, the commenter stated that the circular should not remove a recipient's flexibility to not go above 80 percent Federal share for a project. The FTA notes that there is no loss in flexibility. While recipients must meet certain percentages of local match as a statutory requirement, it is a local decision as to whether to provide overmatch. Another commenter sought clarification regarding whether grantees will need to itemize those components of the vehicles (i.e. the lift at 90 percent and the bus itself at 80 percent) or use the 85 percent Federal share for ADA and CAA compliant vehicles. In response, the purpose of the 85 percent was to codify the previously used application of 83 percent, which was set by FTA for administrative purposes. Recipients may use the 85 percent Federal share for ADA/CAA compliant vehicles. In cases where the grantee is replacing just a piece of equipment for purposes of complying with one or both of these acts, the grantee can itemize that individual piece of equipment for 90 percent.

One commenter asserted that the match requirement should be eliminated on all formula grants and only required on competitive grants. 49 U.S.C. Chapter 53 requires a local match for all FTA formula funded projects. The FTA does not have any discretion to relax this requirement.

One commenter sought clarification regarding Section 5323(i)(2), which permits recipients to count as local match amounts that are expended by a private provider of the public transportation by vanpool for the acquisition of rolling stock to be used by the

provider in the recipient's service area. The proposed circular elaborates further by observing that the effect of this provision is to allow revenues received in the operation of public transportation service by vanpool that exceed operating expenses to be re-invested in capital equipment and to be counted towards a recipient's local match requirement under a capital cost of contracting grant agreement. The FTA's policy on vanpool provisions was addressed in the FY 2015 Annual Apportionment notice. However, FTA has responded to the specific questions raised by the commenter in previous correspondence as the comments were specific to the commenter rather than FTA's vanpool policy.

#### **E. Chapter IV – Planning and Program Development**

In this chapter, FTA proposed guidance on metropolitan and statewide planning requirements. The chapter also addresses programming guidelines, environmental considerations, transfer provisions, and capital project requirements. One commenter expressed appreciation for the language FTA included in the proposed circular regarding the Governor's ability to allocate formula fund apportionments to small UZAs located within or designated as Transportation Management Areas (TMAs) that are different from the allocations FTA publishes. However, the commenter would like FTA to return to pre-MAP-21 practices to make it clear that apportionments for these TMA small urbanized areas must be allocated to these areas. In response, FTA notes that MAP-21 mandated that States and the designated recipients have the discretion as to how these funds are distributed. A change to have apportionments to go directly to small urbanized areas would require a change in the law. Therefore, such a change cannot be included in this circular. Pursuant to section 5336(e), the Governor exercises the authority to allocate

section 5339 formula apportionments to all small UZAs within the State – including those that lie within the planning areas of MPOs serving TMAs. Federal law clearly states that it is up to the State to determine the distribution method for section 5339 funds among small UZAs, and inclusion of small UZAs within the planning area of an MPO that serves a transportation management area (TMA) does not change the status of those small UZAs. They are still small UZAs and subject to the Governor’s allocation. As for the funding apportioned by formula, for small UZAs, the Governor has flexibility to allocate the funds among the small UZAs to meet the capital bus needs in those areas.

Regarding FTA’s proposal that Section 5339 recipients develop a program of projects (POP), two commenters asserted that MAP-21 does not specifically require a “program of projects” to be submitted to the Secretary for the 5339 program and would like FTA to relax the requirements for the POP. The same commenters also recommended that FTA consider adding language to the circular that allows FTA to approve whole categories of projects immediately upon filing of the POP by a grantee. The FTA notes that Section 5339(b) requires that recipients comply with Section 5307 grant requirements, and the program of projects is a requirement at 49 U.S.C. 5307(b). Further, given the statutory provision relates to recipients, FTA expects recipients to be applying on behalf subrecipients, and therefore the grant should be accompanied by a POP. Another commenter sought clarification on how the designated recipient is to notify FTA prior to making revisions to the POP. The circular instructs designated recipients to work with their FTA regional office when developing the POP. This is consistent with other FTA program circulars, particularly for programs that require POPs.

In the proposed circular, FTA provided guidance on FTA’s useful life policy. One

commenter recommended that FTA increase the asset limit for useful life determinations to 50 percent of the asset's original value. Revisiting the standards would require extensive research and is beyond the scope of this program circular; thus, FTA cannot address this cross-cutting issue in this circular.

Another commenter urged FTA to continue the exemption of Section 5311 operators from the rolling stock spare ratio of 20 percent. Furthermore, the commenter asked FTA to adopt an exemption for contingency fleets from the spare ratio calculation and allow vehicles that still have a federal interest or useful life be an eligible vehicle for contingency fleets. These comments are outside the scope of this particular circular as they are cross-cutting issues that apply to other FTA programs. However, recipients are reminded that the rolling stock spare ratio policy only applies to fleets of 50 or more vehicles.

One commenter asserted that FTA's proposed guidance to competitively procure rebuilding work from the private sector would restrict a transit agency's ability to use its staff and would also create conflicts with labor unions. The commenter recommended that FTA allow subrecipients that have a qualified labor force to use that labor force for vehicle rebuilds instead of procuring the service from the private sector. The commenter also sought clarification regarding what may constitute a "mitigating circumstance" and what FTA would consider an interference with "normal maintenance activities" if rebuild work is done in-house. In addition, the commenter recommended that FTA specify in its final guidance that overhaul and rebuild work conducted by in-house labor are eligible expenses. Overhaul and rebuild work conducted by in-house labor are eligible expenses. The circular does not restrict the use of a qualified labor force for vehicle rebuilds and

overhauls. The use of a grantee's own labor force to accomplish a capital project is force account labor and is eligible under the program. See the current version of circular 5010 for more information and force account requirements for capital projects. Please note that force account requirements do not apply to overhaul activities as those projects are considered to be preventive maintenance.

Finally, one commenter requested clarification in response to FTA's proposal in section 7 of this chapter indicating that Section 5339 funds are not available to be transferred between FHWA and FTA for transit or highway projects. Section 5334(i) of title 49, U.S.C. provides that FHWA funds used for transit projects may be transferred to FTA, and FTA funds used for highway projects shall be transferred to FHWA for program administration. Since funds available under Section 5339 are not available for highway projects, they may not be transferred to FHWA.

#### **F. Chapter V – Program Management and Administrative Requirements**

This chapter outlines the requirements to which Section 5339 recipients must certify compliance, including legal, technical, and financial capacity. Recipients (including subrecipients and contractors) of Section 5339 program funds are required by statute to submit data to the National Transit Database (NTD).

One commenter asserted that NTD reporting requirements should not apply to Section 5339 recipients that are not providers of public transportation or are not also recipients of Section 5307 or Section 5311 funds. Two commenters recommended that the section on NTD reporting include language that confirms that if Section 5339 funds

are awarded by the State to a Section 5307 recipient (i.e., the Section 5307 recipient becomes a subrecipient of the State under the Section 5339 program), the Section 5307 recipient retains all NTD reporting obligations, including reporting for the Section 5339 funds. The commenters also recommended that FTA consider revising the reporting requirements for the Section 5311 program such that NTD reporting is rolled up at the State level and individual subrecipient reporting ends. The same commenters also expressed concern that the proposed circular includes language that requires recipients or beneficiaries of Section 5339 funding to file monthly safety and security reports in the NTD system that contain increased reporting obligations. Although NTD reporting requirements dictate that certain grantees report, monthly safety and security reports are not required under the 5339 Program.

One commenter asked FTA to increase the limit for small purchases to \$150,000 as is currently proposed in the Office of Management and Budget (OMB) Super Circular in order to allow agencies the opportunity to purchase one or two vehicles without having to complete an onerous competitive procurement for small purchases. On December 26, 2013, OMB issued final guidance 2 CFR Part 200 “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards” also known as the “Super Circular.” 78 FR 78590. The guidance, which will take effect with new grants obligated on or after December 26, 2014, will supersede and apply in lieu of the common grant rule (49 CFR parts 18 and 19), and will change the simplified acquisition threshold from \$100,000 to \$150,000 to match the Federal Acquisition Regulation. See 2 CFR 200.88. We have amended the circular to reflect this change.

#### **G. Chapter VI – State and Program Management Plans**

This chapter begins by providing a general overview of State and Program Management Plans (SMP and PMP) which are intended to facilitate both recipient management and FTA oversight by documenting the State's and designated recipient's procedures and policies for administering the Section 5339 program. One commenter expressed concern that FTA is proposing a PMP for a program that does not warrant this high level of management. The commenter strongly suggested the FTA reconsider the requirement for a PMP. In response, FTA notes that a PMP or SMP, for the case of a State recipient, is required for any program in which the recipient will be managing subrecipients, as it facilitates both recipient management and FTA oversight by documenting the designated recipient's procedures and policies for administering the Section 5339 program. The primary purpose of the PMP/SMP is to serve as the basis for FTA to perform recipient-level management reviews of the program, and to provide public information on the recipient's administration of the Section 5339 program. It may also be used internally by the recipient as a program guide for local project applicants.

One commenter sought clarification regarding whether a PMP is required from a single designated recipient within a large Urbanized Area. If there is only one designated recipient, then a PMP is not required. However, if the designated recipient is managing and overseeing multiple subrecipients, then a PMP is required.

## **H. Chapter VII – Other Provisions**

This chapter describes cross-cutting Federal requirements that apply to the Section 5339 Program. The FTA did not receive any substantive comments on this chapter and did not make any substantive edits.

## **I. Appendices**



The appendices include instructions for preparing a grant application and a budget, an application checklist, and several forms and representative documents that recipients will need when applying for Section 5339 funds. One commenter recommended including a sample sub-agreement between designated recipients and potential subrecipients. The FTA notes that the designated recipient must still manage the grant in TEAM. The FTA has no role in the relationship between subrecipients and designated recipients other than determining if the subrecipient is eligible for FTA funding. Therefore, there is not a "one-size fits all" sample agreement between subrecipients and designated recipients.

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Therese M. McMillan,  
Acting Administrator.

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